IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
May 16, 2006 Session

STATE OF TENNESSEE v. RICKY LEE BEAMON

Direct Appeal from the Criminal Court for Hamilton County
Nos. 238463 & 245041 Rebecca J. Stern, Judge

No. E2005-01656-CCA-R3-CD Filed October 5, 2006

The Defendant, Ricky Lee Beamon, pursuant to charges contained in two indictments, was convicted by a Hamilton County jury of various counts of burglary, theft of property, and aggravated criminal trespass. The trial court sentenced the Defendant, as a career offender, to an effective sentence of twenty-seven years. On appeal, the Defendant contends that: (1) the evidence is insufficient to sustain the guilty verdict; (2) the offenses should have been severed for separate trials; (3) evidence obtained during his arrest in case 245041 should have been suppressed; (4) case 245041 should have been dismissed based on double jeopardy; (5) the State's notice of enhancement was filed late in case 245041; (6) photographs were improperly admitted in case 238463; (7) a mistrial should have been ordered in case 238463 because the State improperly excluded African-American jurors; (8) he was not allowed to obtain private counsel; (9) the trial court "suggested" a guilty verdict to the jury in case 245041; and (10) he was improperly sentenced as a career offender to an effective sentence of twenty-seven years. Finding that there exists no reversible error, we affirm the judgments of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Criminal Court Affirmed

ROBERT W. WEDEMEYER, J., delivered the opinion of the court, in which DAVID H. WELLES and NORMA MCGEE OGLE, JJ., joined.

John G. McDougal, Chattanooga, Tennessee, for the appellant, Ricky Lee Beamon.

Paul G. Summers, Attorney General and Reporter; Leslie E. Price, Assistant Attorney General; William H. Cox III, District Attorney General; Bates Bryan, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION
I. Facts

This appeal arises from an appeal of two separate cases, case number 238463 and case number 245041. In case 238463, the Defendant was indicted for two counts of burglary, one count of aggravated burglary, and three counts of theft of property valued under $500 that all occurred on July

29, 2001. In case number 245041, the Defendant was indicted for theft of property valued over $10,000 and for aggravated burglary. Upon motion by the Defendant, the trial court ordered that the trials in these two cases be held separately. Subsequently, the Defendant was convicted in case number 238463 of two counts of burglary, one count of aggravated criminal trespass, and three counts of theft of property valued under $500. The Defendant was separately convicted in case number 245041 of theft of property valued over $10,000. Following one sentencing hearing at which all convictions in both indictments were addressed, the trial court sentenced the Defendant to an effective sentence of twenty-seven years in prison.

A. Case Number 238463

This case arises from events that occurred on July 29, 2001, for which the Defendant was indicted on burglary, aggravated burglary, and theft charges. Prior to the Defendant's trial on these charges, the Defendant informed the trial court that he was unhappy with his attorney. The State reminded the trial court that, prior to his current attorney's appointment, the Defendant had already fired two attorneys and represented himself pro se. The State also said that the Defendant was informed prior to the last attorney change that if he changed lawyers again he would still be held to his trial date. The trial court informed the Defendant that the case would go forward as scheduled.

At the Defendant's trial, the following evidence was presented: Margaret Reisman testified that shortly after 4:00 p.m. on July 29, 2001, she heard her dogs barking and came downstairs in her house. When she looked out her window, she saw a car parked by the tennis court behind her house. Reisman went to her backdoor and saw a man at the door to her garage. At first, she thought it was the lawn service, but she felt that it was strange for the lawn service to be there on a Sunday. She opened the backdoor and said something to the effect of "excuse me" or "can I help you," and the man looked at her and indicated no. Reisman slammed the door shut and called 9-1-1. Reisman identified the Defendant as the man that she saw that day.

Reisman said that, as she was talking to the 9-1-1 operator, the Defendant started driving his car down the driveway. Then, he stopped his car and started walking back up the hill toward her, and she thought that he saw her on the phone. Reisman saw the Defendant walk toward a gas powered hedge cutter that she thought he had placed on the side of the driveway. After the Defendant left, Reisman discovered that a gardening tool set and her hedge cutter was missing. The hedge cutter was found by her driveway in the front yard, and the police later returned the tool set to her. Reisman said that the value of the tool set was under $500.00. Resiman said that the Defendant did not have permission to enter her garage.

On cross-examination, Resiman said that when she first saw the Defendant he was at her garage door. She said that she and the Defendant looked at each other, and she was about ten feet away from him. Reisman said that she never saw the Defendant in her garage, but the tool set that he took was sitting next to the backdoor of the house, inside the garage. She agreed that her tool set did not have her name on it or any other identifying features.

Maxwell Lee, an officer with the City of Chattanooga Police Department, testified that his records indicated that Reisman called 9-1-1 on July 29, 2001, at 4:26 p.m. The officer said that, at 5:02 p.m. that same day, there was another call placed to 9-1-1 by victims Berry Carroll and Nancy Anderson. On cross-examination, the officer agreed that it was thirty-six minutes between the time that Reisman called 9-1-1 and the time that the second call, which resulted in the Defendant's apprehension, came into 9-1-1.

Stan Nixon testified that on July 29, 2001, he was living on Highland Drive approximately two blocks from Carroll and Anderson. At around 4:30 or 5:00 p.m. that day, he was in his backyard when he saw an unusual car, which he described as a cream-colored Buick, pull into his driveway. He walked toward the car, and the Defendant got out of the car and asked if Nixon wanted his yard mowed. Nixon said that the Defendant had on what looked like brand new tennis shoes, Nixon did not see a lawn mower, and he noticed that the trunk to the Buick was closed. Nixon told the Defendant that he did not need his lawn mowed. The Defendant then left, and Nixon went to a neighbor's, Edwin Howard's, house and got Howard, and the two drove around. When they rounded a turn, Nixon saw what appeared to be the Defendant's car backing out of a driveway. He said that the trunk of the car was open, and he saw a lawn mower and a weedeater "sticking out" of the trunk. Nixon identified pictures of a Buick with the license plate number FDS 848 that showed the lawn mower and weedeater coming from the trunk of the car. Nixon recognized the license plate number because he and Howard followed the Buick closely enough to write down the vehicle's tag number. Nixon testified that, after getting the license plate number, they circled around to another neighbor's house and asked if he was missing a lawn mower or a weedeater. Howard then called 9-1-1.

On cross-examination, Nixon testified that he and the Defendant spoke for approximately two minutes when the Defendant first asked him if he wanted his lawn mowed. Nixon could not recall what the Defendant was wearing other than tennis shoes, whether he was clean-shaven, or whether his hair was longer than it was at the Defendant's trial.

Edwin Howard testified that on July 29, 2001, at around 5:00 p.m., Nixon came to his house, and he got into Nixon's car to look for a man that Nixon had seen earlier. He said that they drove around for ten or fifteen minutes before they saw a car that had lawn equipment in the trunk backing out of Anderson's driveway. Howard testified that they followed the car a short distance, and then they called 9-1-1 to provide the license plate number and general description of the car. On cross-examination, Howard testified that he did not see anyone go into a house.

Berry Carroll testified and identified pictures of his house and his garage. He said that he and his neighbor, Nancy Anderson, shared a driveway and that they each had a garage. Carroll said that on July 29, 2001, at around 5:00 p.m., he heard someone knocking at his front door, and he ran to the front door. He said that there were two men at his door telling him that someone had just backed out of his driveway with a lawn mower. Carroll went outside, noticed that his lawn mower was not missing but saw that his weedeater was missing. He said that he looked in his neighbor's garage and saw that her lawn mower was missing. Carroll identified the photograph of the weedeater and said that the weedeater in the photograph belonged to him. Before it was taken, the weedeater was

hanging on a nail at the back of his garage. On cross-examination, Carroll testified that he did not see anyone go inside his garage. He said that he thought that the weedeater depicted in the photograph belonged to him, and he was sure that the weedeater that he retrieved from the police department belonged to him. On redirect examination, Carroll testified that the value of the weedeater was under $500.

Nancy Anderson testified that on July 29, 2001, she owned a lawn mower, and she identified a picture of her garage. Anderson said that, on July 29th, she was out during the afternoon, and when she returned she found Nixon, Howard, and Carroll, with whom she shares a driveway, waiting in the driveway wanting to know if she was missing a lawn mower. She said that her lawn mower was missing from her garage and that the value of that lawn mower was under $500. Anderson recalled that her lawn mower was returned to her by the police. On cross-examination, Anderson conceded that she was not home when her lawn mower was taken and that she had left her garage door open when she left the house. She said that she got her lawn mower back the same day that it was taken.

Peter Turk, a police officer, testified that on July 29, 2001, at around 5:10 p.m. he heard a call over his police radio to be on the lookout for a car that was leaving the scene of a burglary. The driver of the car was described as a black male and the car as a beige Buick Century with a lawn mower in the trunk and license tag number FDS 848. Officer Turk said that he was in his car at the bottom of a hill "running" radar when he saw a beige Buick Century with a lawn mower in the trunk, and he pulled behind and stopped the car. After verifying the license tag number, Officer Turk called into dispatch that he had pulled over the car and another officer, Officer Hooten, responded. Officer Turk said that, in the car, he saw the lawn mower, two weedeaters, a leaf blower, and a case containing some gardening tools. Officer Turk identified the Defendant as the driver of the vehicle that he pulled over that day. On cross-examination, the officer agreed that everything found in the trunk related to lawn care.

Based upon this evidence the jury found the Defendant guilty of two counts of burglary, one count of aggravated criminal trespass, and three counts of theft of property valued under $500.00, and the trial court sentenced the Defendant, a career offender, to an effective sentence of twelve years.

B. Case Number 245041

This case arises from crimes stemming from the theft of property from the home of the victims, Todd and Janet Plain. At the Defendant's trial for this offense, Todd Plain testified that, on June 7, 2001, he was living with his wife, Janet Plain, at their home on Hixon Pike in Chattanooga. He said that the two had left for work at 7:30 or 8:00 a.m. and had been gone all day. That evening, he pulled into their driveway right after his wife at approximately 6:45 or 7:00 p.m. Plain testified that his wife opened the garage door but did not pull into the garage. When Plain got out of the car, he saw that their "tiller" had been moved to the center of the garage, which prevented him and his wife from parking inside the garage. His wife immediately went into the house and noticed that someone had broken into their home.

Plain said that he went through the courtyard area and noticed that the glass was broken out of two of his glass doors. He said that he assumed that the intruders had muddy feet because he saw the intruders' footprints on the white tile in the kitchen. Plain testified that the intruders took "quite a few" things, including the VCR and stereo systems. Plain opined that the intruders dragged a safe that he and his wife kept hidden in a bedroom closet across the floors down some stairs, tearing the floors, and out of the house. Plain called the police and made an inventory list for the police of the items that were missing from his home. Plain testified that over a year after this incident the State Trooper's Office called him, and he retrieved from them some of the items that were in his safe, including some coins, a passport, class rings, gold bracelets, rings, keys, wedding band sets, coins, and some bonds. Plain said that there was over $25,000 in cash in the safe, and he did not recover any of the cash.

On cross-examination, Plain said that he first realized that someone had been inside his house when he went into his unattached garage and found were some small tools missing from the garage. He said that the troopers returned some, but not all, of the items that had been taken from his home. Plain testified that the money in his safe belonged to his wife, and it was money that she had been saving for fifteen years from her work as a hair stylist. He said that the money had previously been in a safe deposit box in a bank, but, when they received notification that the branch was closing, they temporarily moved the money and other items into a safe in their home. Plain said that he assumed that there was more than one intruder because the safe weighed two hundred and fifty pounds and it was dragged across the floor. On redirect examination, Plain said that a camcorder JVC compact VHS was also taken.

Janet Plain testified that, on June 7, 2001, she and Todd Plain lived on Hixon Pike in Chattanooga. She said that she went to work that day at around 8:00 a.m., and, when she came home at around 7:00 p.m., she pressed her garage door opener. After her garage door was opened, she saw that she could not get her car into the garage because there was a "tiller" in the way. Plain recalled that she went into the front door of her house and saw muddy shoe tracks all over the floor. The tracks went into her den where she saw that her French doors were broken and her television cabinet was pulled out with everything inside missing. At that point, Plain went back outside and saw that her husband was pulling into the driveway, and she told him to call the police.

Plain testified that she and her husband had a safe that they kept in the closet of one of the bedrooms in the house. When she got home, she saw that the hardwood floors were scraped from where the safe was located, down the stairs, through the hallway, and out the French doors. Plain said that one of the items that was in the safe, and that she later recovered, was her high school ring. She described the ring as white gold with the initials of Fort Payne High School, the high school that she attended when she lived in Alabama. Plain estimated that the total value of the items stolen from her house was over $70,000.

On cross-examination, Plain said that the safe was inside a closet in an upstairs bedroom, and there were clothes hanging over the safe. She said that her $70,000 estimate included the value of everything taken from her home, not just the items taken from the safe. Plain explained that there was

a large amount of cash in the safe because she had recently taken it out of her safe deposit box after learning that the bank branch was closing. She said that the cash was located in letter-sized envelopes, and there was $1,000 in each of twenty envelopes. Plain said that her son lives with them part-time, but he was not there the day of the burglary. She said that shortly before the burglary she had some workers in her home, and one of them was named Jeff Wilhoit. She said that he worked in the living room wiring some sconces. Plain said that she bought her own hair salon in 2002, but she never kept any of the money that she made from the salon in the safe.

M.G. Smith, a detective with the Chattanooga City Police Department, testified that he investigated the burglary scene at the Plains' house. He said that at the crime scene he saw muddy footprints and scrape marks on the floor in a straight path leading towards the steps. Detective Smith first went to the den where he found a partial fingerprint on the glass windows of a cabinet. Next, he followed the scratch marks up the steps and into the closet of a back bedroom. The detective saw that the closet was in disarray, and the Plains told him that the closet was where they kept a safe. Detective Smith said that he took an inventory from the Plains of the items that they were missing, and he identified a report that listed those items. Detective Smith said that he did not get any leads in this case. On cross-examination, the detective said that he has not heard anything from the fingerprint department about the partial fingerprint that he found, and he was unsure of the status. The detective said that he could not tell from the muddy footprints if there was one more than one person in the house. Detective Smith said that no one provided him with a description of the suspect.

Kevin Hoppe, a trooper with the Tennessee Highway Patrol, testified that on June 8, 2001, he was working on I-75 southbound in McMinn County and stopped behind a disabled vehicle on the shoulder when he noticed a dark SUV traveling in the right-hand lane. He saw the vehicle cross over the fog line onto the emergency shoulder, where he was parked behind the disabled motorist, and then the SUV got back into the lane of travel. As the vehicle passed, Trooper Hoppe noted that the Defendant was a black male and that the SUV was a dark colored Nissan Pathfinder that did not have any tags. The trooper said that he thought that the driver may be intoxicated, so he left the disabled vehicle and followed the SUV. The trooper said that the SUV was "slow to pull over," and, as he approached the SUV, he saw the driver, whom he identified as the Defendant, hide what appeared to be a Tennessee license between the driver's seat and the center console area. The trooper described the back of the Pathfinder and said that the approximate dimensions of the back area were four feet wide by five to six feet deep, if the seats were folded down, and four feet tall.

Trooper Hoppe testified that he asked the Defendant where his tag was, and the Defendant mentioned "something about" a temporary tag that had fallen off the SUV. The trooper talked to the Defendant for a "second" and noticed a beer bottle in the front passenger floorboard. The trooper asked the Defendant for his license, and the Defendant appeared "very nervous" and started looking around. At that point, Trooper Hoppe asked the Defendant to get out of the vehicle, and the trooper reached and got the Defendant's driver's license. The Defendant handed the trooper some paperwork for the car, including an odometer disclosure statement and a bill of sale. The trooper noticed that the Defendant kept looking at a garbage bag in the passenger seat. The trooper asked the Defendant what was in the bag, and the Defendant said that there was money in the bag. When asked how much

money, the Defendant responded, "Oh, five or six thousand." The Defendant told Trooper Hoppe that the Defendant had saved the money. Trooper Hoppe said that it appeared that there was more than that much money in the garbage bag.

The trooper talked with the Defendant for a short time, and the Defendant told him that he had to use the bathroom. The Defendant asked if he could go to the edge of the woods to use the restroom. The trooper told the Defendant that he was going to run the Defendant's license, and then he agreed to allow the Defendant to use the restroom. Trooper Hoppe said that, when the Defendant reached the wood line, he saw the Defendant "take off." The trooper called for backup. While other officers were chasing the Defendant, Trooper Hoppe towed, and then fully inventoried, the Defendant's vehicle. The trooper found a camcorder and a bag. In the bag were an old newspaper, old coins, large amounts of U.S. Savings bonds, old jewelry, class rings, old coins, and a passport belonging to a "Todd Plain." Additionally, the trooper found $15,420.05 in cash in the bag, and he found some "copper scrubber pads" and "copper scrubber flakes" in the vehicle, which he thought may be related to drug activity.

On cross-examination, the trooper said that he did not recall whether he told the Defendant that he was going to give him a field sobriety test when he first pulled him over. The trooper said that he and his supervisor counted the money that was in the garbage bag together and that most of it was loose in the bag and not in envelopes. The trooper agreed that he did not know exactly where the money in the Defendant's vehicle had come from. Trooper Hoppe said that he did not see a television or a safe in the back of the Defendant's SUV.

Based upon this evidence, the jury found the Defendant guilty of theft of property valued over $10,000, and it found him not guilty of aggravated burglary.

II. Analysis

On appeal, the Defendant contends that: (1) the evidence is insufficient to sustain the guilty verdict; (2) the offenses should have been severed for separate trials; (3) evidence obtained during his arrest in case 245041 should have been suppressed; (4) case 245041 should have been dismissed based on double jeopardy; (5) the State's notice of enhancement was filed late in case 245041; (6) photographs were improperly admitted in case 238463; (7) a mistrial should have been ordered in case 238463 because the State improperly excluded African-American jurors; (8) he was not allowed to obtain private counsel; (9) the trial court "suggested" a guilty verdict to the jury in case 245041; and (10) he was improperly sentenced as a career offender to an effective sentence of twenty-seven years.

A. Sufficiency of the Evidence

The Defendant contends that the evidence is insufficient to sustain any of his convictions in either of the two cases. When an accused challenges the sufficiency of the evidence, this Court's standard of review is whether, after considering the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable

doubt. Tenn. R. App. P. 13(e); State v. Goodwin, 143 S.W.3d 771, 775 (Tenn. 2004) (citing State v. Reid, 91 S.W.3d 247, 276 (Tenn. 2002)). This rule applies to findings of guilt based upon direct evidence, circumstantial evidence, or a combination of both direct and circumstantial evidence. State v. Pendergrass,13 S.W.3d 389, 392-93 (Tenn. Crim. App. 1999). "[B]efore an accused can be convicted of a criminal offense based on circumstantial evidence alone, the facts and circumstances 'must be so strong and cogent as to exclude every other reasonable hypothesis save the guilt of the defendant . . . .'" State v. Raines, 882 S.W.2d 376, 380 (Tenn. Crim. App. 1994) (quoting State v. Crawford, 470 S.W.2d 610, 612 (Tenn. 1971)). "In other words, '[a] web of guilt must be woven around the defendant from which he cannot escape and from which facts and circumstances the jury could draw no other reasonable inference save the guilt of the defendant beyond a reasonable doubt.'" Id. (quoting Crawford, 470 S.W.2d at 613).

In determining the sufficiency of the evidence, this Court should not re-weigh or re-evaluate the evidence. State v. Matthews, 805 S.W.2d 776, 779 (Tenn. Crim. App. 1990). Nor may this Court substitute its inferences for those drawn by the trier of fact from the evidence. State v. Buggs, 995 S.W.2d 102, 105 (Tenn. 1999); Liakas v. State, 286 S.W.2d 856, 859 (Tenn. 1956). Questions concerning the credibility of the witnesses, the weight and value of the evidence, and all factual issues raised by the evidence are resolved by the trier of fact. Liakas, 286 S.W.2d at 859. "A guilty verdict by the jury, approved by the trial judge, accredits the testimony of the witnesses for the State and resolves all conflicts in favor of the theory of the State." State v. Grace, 493 S.W.2d 474, 476 (Tenn. 1973). Our Supreme Court stated the rationale for this rule:

> This well-settled rule rests on a sound foundation. The trial judge and the jury see the witnesses face to face, hear their testimony and observe their demeanor on the stand. Thus the trial judge and jury are the primary instrumentality of justice to determine the weight and credibility to be given to the testimony of witnesses. In the trial forum alone is there human atmosphere and the totality of the evidence cannot be reproduced with a written record in this Court.

Bolin v. State, 405 S.W.2d 768, 771 (Tenn. 1966) (citing Caroll v. State, 370 S.W.2d 523, 527 (Tenn. 1963)). This Court must afford the State of Tennessee the strongest legitimate view of the evidence contained in the record, as well as all reasonable inferences which may be drawn from the evidence. Goodwin, 143 S.W.3d at 775 (citing State v. Smith, 24 S.W.3d 274, 279 (Tenn. 2000)). Because a verdict of guilt against a defendant removes the presumption of innocence and raises a presumption of guilt, the convicted criminal defendant bears the burden of showing that the evidence was legally insufficient to sustain a guilty verdict. Id.; see State v. Carruthers, 35 S.W.3d 516, 557-58 (Tenn. 2000).

1. Case Number 238463

In case number 238463, the Defendant was convicted of two counts of burglary, one count of aggravated criminal trespass, and three counts of theft of property valued under $500. He asserts that the evidence is insufficient to sustain these convictions because no one saw him enter the garage of either of two of the victims, Berry Carroll or Nancy Anderson, and, while the victims identified

pictures of their property, there is no link "as to where the pictures were taken or when the pictures were taken."[1] Because the Defendant only provides argument with respect to his convictions for crimes against Carroll and Anderson, we turn to address whether the evidence is sufficient to sustain the Defendant's convictions for crimes against Carroll and Anderson, namely the two counts of burglary and two counts of theft of property valued under $500.

Pursuant to the Tennessee Code, "A person commits burglary who, without the effective consent of the property owner: (1) Enters a building other than a habitation (or any portion thereof) not open to the public, with intent to commit a felony, theft or assault . . . ." Tenn. Code Ann. § 39-14-402(a)(1) (2003). "A person commits theft of property if, with intent to deprive the owner of property, the person knowingly obtains or exercises control over the property without the owner's effective consent." Tenn. Code Ann. § 39-14-103 (2003). If the property obtained is valued at five hundred dollars or less, the theft offense is a Class A misdemeanor. See Tenn. Code Ann. § 39-14-105(1) (2003).

The Defendant contends that no one saw him enter the garage and the pictures did not link him to this crime; therefore, he is contesting his identity as the perpetrator of this crime. The State is obligated to prove beyond a reasonable doubt that the defendant was the person who committed the crime in question. See State v. Sneed, 908 S.W.2d 408, 410 (Tenn. Crim. App. 1995). This is a question of fact for the determination of the jury following consideration at trial. State v. Crawford, 635 S.W.2d 704, 705 (Tenn. Crim. App. 1982). The identity of the perpetrator is an essential element of any crime, and therefore must be proven by the State beyond a reasonable doubt. State v. Thompson, 519 S.W.2d 789, 793 (Tenn. 1975). Issues of identity and credibility are classic jury questions. State v. Gregory Mullins, No. E2004-02314-CCA-R3-CD, 2005 WL 2045151, at *5 (Tenn. Crim. App., at Knoxville, Aug. 25, 2005), *perm. app. denied* (Tenn. 2005). Questions concerning the credibility of the witnesses are resolved by the trier of fact. State v. Evans, 108 S.W.3d 231, 236 (Tenn. 2003).

The evidence presented at trial, viewed in the light most favorable to the State, proved that the Defendant approached Stan Nixon and asked Nixon if he needed his lawn mowed. Nixon noticed that the Defendant did not have a lawn mower in his vehicle, and the trunk of the Defendant's vehicle was closed. Nixon got another neighbor, Howard, and the two drove around looking for the Defendant. Shortly thereafter, they saw the Defendant backing out of a driveway shared by Carroll and Anderson, and the Defendant had a lawn mower and a weedeater in the open trunk of his car. The two men called 9-1-1 and provided a description of the Defendant's car and license plate number. The Defendant was stopped by police, and he had a lawn mower and a weedeater in his trunk. Carroll testified that a weedeater was missing from his garage, and he identified the weedeater found in the

[1]The Defendant provides no argument that the evidence is insufficient to sustain his convictions for burglary and theft from Margaret Reisman's garage, as listed in the indictment in counts 3 and 6. In count 3, the Defendant was indicted for aggravated burglary, and the jury convicted him of the lesser-included offense of aggravated criminal trespass against victim Margaret Reisman. In count 6, the jury convicted the Defendant of theft of property valued under $500 for taking property from Margaret Reisman's garage. The Defendant seemingly does not appeal these two convictions.

Defendant's car as belonging to him and being worth less than $500. Anderson testified that a lawn mower was missing from her garage, and she identified the lawn mower found in the Defendant's car as belonging to her and being worth less than $500. This circumstantial evidence creates a web of guilt around the defendant from which he cannot escape and from which facts and circumstances the jury could draw no other reasonable inference save his guilt beyond a reasonable doubt. The Defendant is not entitled to relief on this issue.

2. Case Number 245041

In case number 245041, the Defendant was convicted of theft of property valued over $10,000. The Defendant contends that the evidence is insufficient to sustain these convictions because there was no proof that the Defendant knew that the items or money found in his car were stolen, and there was no proof that this money did not belong to him.

"A person commits theft of property if, with intent to deprive the owner of property, the person knowingly obtains or exercises control over the property without the owner's effective consent." Tenn. Code Ann. § 39-14-103 (2003). If the value of the property obtained is more than $10,000, but less than $60,000, the theft offense is a Class C felony. See Tenn. Code Ann. § 39-14-105(4) (2003).

The evidence in this case, viewed in the light most favorable to the State, proved Todd and Janet Plain discovered a number of items missing from their home, including a safe that contained $25,000 in cash, rare coins, savings bonds, jewelry, Todd Plain's passport, and Janet Plain's class ring. The Defendant was stopped on suspicion of DUI, and, during the stop, he kept looking at a garbage bag on his front passenger's seat. The Defendant told officers that there was five or six thousand dollars in cash in the bag, and he then asked to use the restroom and fled from police. In a garbage bag on the front passenger's seat of the Defendant's vehicle, officers found in his vehicle savings bonds, jewelry, $15,420.05 in cash, and a passport belonging to the Plains. The Plains were later called by police, and they identified coins, a passport, class rings, gold bracelets, rings, keys, wedding band sets, coins, and some bonds as belonging to them. This evidence is clearly sufficient to support the Defendant's conviction for theft of property valued over $10,000. He is not entitled to relief on this issue.

B. Severance

The Defendant next asserts that the trial court erred when it did not sever all of the burglary and theft charges in case number 238463, and that this denial prejudiced him. The State contends that, prior to trial, the Defendant requested that the trial for indictment number 238463 be severed from the trial for indictment number 245041 but that he did not request a separate trial for each of the counts in indictment number 238463. Therefore, the State contends, this issue is waived. Further, the State asserts that, even if not waived, all of these offenses occurred during the same criminal episode, meaning that the Defendant would have to show that severance is necessary for a fair determination of his guilt or innocence prior to prevailing on this claim.

The Defendant fails to make any citation to the record showing where he asked for severed trials. The technical record shows that prior to trial the Defendant filed a motion for severance of offenses, in which he moved for "severance of the charges that are coming up for December 9, 2003." The motion included the case numbers for both indictments that are part of the case under submission. Prior to the first trial in this case, the Defendant's counsel brought the motion for severance to the trial court's attention. The State's attorney then said "on June 7th, 245041 occurred and it was July 29th when 238463 occurred. We agree with [the Defendant's] motion that those two sets of cases should be separated." The trial court sustained that motion, and the Defendant's counsel made no further request for the trials to be severed.

"Unless the defendant moves to sever the offenses prior to trial or at an otherwise appropriate time, the defendant waives the right to seek separate trials of multiple offenses." Spicer v. State, 12 S.W .3d 438, 443 (Tenn. 2000) (citing Tennessee Rules of Criminal Procedure 12(b)(5) and 14(a)). Because the appellant did not file a pretrial motion to sever the offenses, we hold that he has waived this issue. See also State v. Jason J. Melton, No. M2004-00714-CCA-R3-CD, 2005 WL 2255604, at *7 (Tenn. Crim. App., at Nashville, Aug. 23, 2005), *no Tenn. R. App. P. 11 application filed*. The Defendant is, therefore, not entitled to relief on this issue.

C. Motion to Suppress

The Defendant asserts that the trial court erred when it denied his motion to suppress evidence against him in case number 245041. The Defendant makes no citation to any authority and does not provide any argument in his brief, and, by not so doing, he risks waiving this issue. Ordinarily, "issues which are not supported by . . . citation to authorities, or appropriate references to the record will be treated as waived in this Court." Tenn. Crim. App. R. 10(b). In the case under submission, however, the Defendant does attempt to "rely upon his argument before the [trial] [c]ourt."

The technical record reflects that the Defendant filed a motion to suppress any evidence seized pursuant to the search and seizure of the Defendant. The Defendant asserts that the police officer who stopped him did not have reasonable suspicion to justify the stop. Further, he asserts that he had only a "momentary lapse" when he crossed the center line once and that this did not amount to circumstances sufficient to support the officer's stop. The hearing on this motion to suppress is not included in the record, and the trial court's findings at that hearing are also absent from the record.

"When a party seeks appellate review of an issue, the party has a duty to prepare a record which conveys a fair, accurate and complete account of what transpired with respect to the issue presented for review." State v. Griffis, 964 S.W.2d 577, 592 (Tenn. Crim. App. 1997) (footnote omitted). "When the record is incomplete and does not contain a transcript of the proceedings relevant to the issue presented for review, the appellate court is precluded from considering the issue." Id. at 592-93 (footnote omitted). "Instead, the appellate court must conclusively presume the ruling of the trial court on the motion was correct." Id. at 593 (footnote omitted). We are, therefore, constrained to conclude that the trial court's ruling on the motion to suppress in the case under submission was correct. Furthermore, we find his argument in his motion to suppress unpersuasive. The Defendant is not entitled to relief on this issue.

D. Sentencing

In case 245041, The Defendant asserts that the trial court improperly enhanced his sentence because the State did not file a timely notice of enhancement pursuant to Tennessee Code Annotated section 40-35-202 (2003). In case number 238463, the State filed a notice of its intent to seek an enhanced punishment on February 8, 2002, prior to the trial for this case which was held on December 9, 2003. In case number 245041, the State filed notice of its intent to seek enhanced punishment on July 21, 2004, just one day before the trial which was held on July 22, 2004. On July 22, 2004, immediately prior to trial, the Defendant objected to the second notice to enhance punishment, stating that he was not given adequate notice. The State contended that the Defendant could not show that he was prejudiced. The trial court found:

> If this were the only case that he had and we hadn't been trying him on other cases and actually started this case once this year and talked about the fact he was possibly [a] career [offender], then I would say, yeah, this comes as a big shock and surprise. I think the purpose is notice, I think he has notice through lots of other ways.

The Defendant's attorney then asserted that the plain language of the statute required that the Defendant be given notice ten days prior to trial, and the trial court found, "I am going to hold that he has notice in this because we have discussed it in court before."

Tennessee Code Annotated section 40-35-202(a) states:

> If the district attorney general believes that a defendant should be sentenced as a multiple, persistent or career offender, the district attorney general shall file a statement thereof with the court and defense counsel not less than ten (10) days before trial or acceptance of a guilty plea; provided, that notice may be waived by the defendant in writing with the consent of the district attorney general and the court accepting the plea.

See also Tenn. R. Crim. P. 12.3. The Tennessee Supreme Court has stated:

> The purpose of subsection (a) is to provide fair notice to an accused that he is exposed to other than standard sentencing. It is intended to order plea-bargaining, to inform decisions to enter a guilty plea, and to aid to some extent trial strategy. Notice is important not only in preparation for a sentencing hearing, but in evaluating the risks and charting a course of action before trial. The Legislature has expressly placed the responsibility of notice upon the district attorney, along with the discretion to seek enhanced sentencing.
>
> When the notice is given only shortly before trial, an accused may not rest on the State's error, but must claim needed time by seeking a continuance and show some prejudice from the late filing. Although a continuance might be a partial remedy in

> some circumstances, it would not ordinarily suffice to correct misinformation. When a detail of the required information is omitted or incorrect, the inquiry should be whether the notice was materially misleading. Where an ambiguity or contradiction appears on the face of the notice, defendant has a duty to inquire further.

State v. Adams, 788 S.W.2d 557, 599 (Tenn. 1990) (citation omitted).

In the case under submission, it is clear that the Defendant was not prejudiced by the State's late filing of its notice of intent to seek enhanced punishment in case number 245041. First, the record does not indicate that the Defendant moved for a continuance at the time that he objected to the notice in case number 245041. The fact that the notice is not filed until the date trial begins does not render the notice ineffective in the absence of some showing of prejudice on the part of the defendant, particularly where defense counsel does not move for a continuance or postponement of the trial as he is clearly authorized to do under Tennessee Rule of Criminal Procedure 12.3(a). See State v. Stephenson, 752 S.W.2d 80, 81 (Tenn. 1988).

Additionally, the State had filed a similar notice in case number 238463 on February 8, 2002, more than two years prior to the trial date in case number 245041. That notice provided each of the Defendant's previous convictions and the State's reasons for its intent to seek an enhanced punishment in case number 238463. The same attorney represented the Defendant at both trials, and the record reflects that, although case number 238463 was not officially joined with case number 245041, the trial court and the parties were dealing with the two indictments as if they were joined. This lends credence to the trial court's assertion that the Defendant had notice of the State's intent to seek enhanced punishment "through lots of other ways."

Finally, the trial court noted that during plea negotiations and pretrial hearings for both cases, the Defendant was aware that the State was attempting to have him sentenced as a career offender. Clearly, the Defendant was on notice of the State's intent to seek enhanced punishment, and he cannot show that he was, in any way, prejudiced. Therefore, he is not entitled to relief on this issue.

E. Waived Issues

The rules of our Court clearly state, "Issues which are not supported by argument, citation to authorities, or appropriate references to the record will be treated as waived in this court." Tenn. R. Crim. App. 10(b); State v. Killebrew, 760 S.W.2d 228, 231 (Tenn. Crim. App. 1988). We conclude, therefore, that the Defendant has waived the following issues, which are briefly summarized.

The Defendant asserts that the trial court erred when it refused to allow him to obtain private counsel. The Defendant provides no citations to the record or to any legal authority. This issue is waived.

In case number 238463, the Defendant asserts that the trial court improperly admitted a photograph when the State did not establish the chain of custody or authenticate the photograph. The Defendant provides no citation to the record and does not tell this Court about which photograph he

is complaining. This issue is waived.

In case number 238463, the Defendant asserts that the trial court erred by denying his motion for a mistrial based upon the State's removal of African-Americans from the jury venire. He asserts that, although the State provided a racially neutral reason for this removal, he objects to their removal. The Defendant provides no citations to any authority to support his contention, and he did not object prior to the jury being impaneled. This issue is waived.

The Defendant asserts that the trial court erred when it denied his motion to dismiss case number 245041, because of a mistrial caused by the State. He asserts that the prosecutor improperly mentioned the Defendant's record twice. Again, he provides no citation to the record in making this assertion, and he states, "While the [Defendant] has no proof of prosecutorial misconduct. [sic] He would none the less ask this Court to send case 245041 back to the trial court to be dismiss [sic] because of double jepardy [sic]." This issue is waived.

In case 245041, the Defendant asserts that the trial court suggested the jury verdict by asking the jury if it had convicted the Defendant of theft of property valued over $10,000. He again provides no citations to the record or to any legal authority. This issue is waived.

Finally, the Defendant asserts that the trial court erred when it sentenced him because his sentences should have been decided by the jury and because his sentences were improperly ordered to run consecutively. The Defendant provides no citation to the record or to any legal authority to support this contention. This issue is waived.

III. Conclusion

In accordance with the foregoing authorities and reasoning, the judgments of the trial court are affirmed.

_____

ROBERT W. WEDEMEYER, JUDGE